

THE MYOPIC LOSS OF NATIONALITY RIGHTS LEADING TO STATELESSNESS

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ABSTRACT

This article discusses how various jurisdictions address the loss or deprivation of nationality or citizenship that leads to statelessness. Nationality loss can occur by two means: a State may displace an individual's right to nationality arbitrarily through its official or unofficial laws or through its conduct; alternatively, an individual may relinquish his or her existing nationality by his own intentional or inadvertent act. His or her contribution triggers operation of law which then limits access to nationality rights.

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I. INTRODUCTION

The United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR)¹ on 10 December 1948. Forty-eight out of fifty-eight Member States voted to pass the instrument.² These progressive States were: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam (Thailand), Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, and Venezuela.³ The remaining Member States abstained or declined to exercise franchise: Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR, Yugoslavia, Honduras and Yemen.⁴

The voting States therein represented the first global consensus to recognize a right to nationality. Their affirmation that the right could apply under international law, as well as their own domestic legal systems, is truly relevant. It confirms that the possession of nationality and its accompanying rights are fundamental to protect an individual. Having a nationality shields a person politically in the nation(s) he or she belongs to and interacts with.

On a local level, a right to nationality is a crucial precautionary measure to reside securely in one's country.⁵ For example, pandemics such as COVID-19 demonstrate the health care costs and logistical impediments that confront States. Overwhelmed or cautious States in response may require non-citizens to exit.

A right to nationality is also a crucial transnational precautionary measure that allows one to manifest his or her mobility rights⁶ unhindered. One can cross borders for travel, work, educational, or residential purposes. Otherwise, a person who lacks a nationality is stateless⁷ and is barred invariably from entering or remaining in other countries.

Article 15 of the UDHR reflects the above safeguards. It enunciates three components of the right to nationality. Each individual is entitled to have a

1. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

2. *Social, Humanitarian and Cultural Questions*, 1948-49 Y.B. on H.R. 535, U.N. Sales No. 1950.I.II.

3. *Id.*

4. *Id.*

5. *Id.* at art. 13(1).

6. *Id.* at art. 13(2).

7. Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117 (entered into force June 6, 1960) [hereinafter 1954 Stateless Convention] ("For the purpose of this Convention, the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law.").

nationality; he or she is entitled to keep that right; and he or she is entitled to invoke the legal opportunity to change the nationality.

Article 15⁸

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Alas, the UDHR is not binding on member states. This drawback means that member states are not obliged to abide by Article 15 under international or domestic law.⁹ Subsequent international treaties are binding and enshrine a right to nationality. They are limited in scope though. Geographical or demographic factors govern their applicability. For example, the American Declaration of the Rights and Duties of Man¹⁰ and the American Convention on Human Rights¹¹ are regional instruments while the International Covenant on Civil and Political Rights (ICCPR)¹² guarantees the right to nationality merely to children.

The Declaration and Convention echo the language of Article 15 of the UDHR. The Declaration came into effect just over six months before the UDHR was ratified. Article XIX reads: “[e]very person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.”¹³ Article 20 of the Convention elaborates on the Declaration and UDHR with the insertion of subclause 2.

Article 20. Right to Nationality¹⁴

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

The ICCPR does not have a provision similar to Article 20(2) of the American Convention. Article 24(2) of the ICCPR serves as a counterpart instead.¹⁵ It can be interpreted to avoid potential statelessness situations.

8. UDHR, *supra* note 1, at art. 15.

9. See Jacob Dolinger, *The Failure of the Universal Declaration of Human Rights*, 47 U. MIAMI INTER-AM. L. REV. 164, 183 (2016).

10. *American Declaration on the Rights and Duties of Man*, May 2, 1948, 1 Annals of the O.A.S. 130 (1949) [hereinafter *American Declaration*].

11. American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123 [hereinafter ACHR].

12. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966) [hereinafter ICCPR].

13. *American Declaration*, *supra* note 10, at art. XIX.

14. ACHR, *supra* note 11, at art. 20.

15. See ICCPR, *supra* note 12, at art. 24(2).

Article 24(3) ensures that “[e]very child has the right to acquire a nationality.”¹⁶ Article 24(2) instructs legal enforcement of this right by requiring a new born child to be named and registered immediately.¹⁷ This procedure necessitates that the State grants documentary proof of birth to the child by maintaining birth records and issuing birth certificates, which act also as identification papers.¹⁸ However, according to the U.N. Human Rights Committee in its ‘General Comment No 17: Article 24 (Rights of the Child),’ Article 24(2) does not guarantee automatic birth right nationality.¹⁹ A State where a child is born does not have to offer nationality to a child who may be eligible to receive the nationality of another State.²⁰ It is required, though, to bestow nationality to a child who would be stateless otherwise.²¹ The 1961 Convention on the Reduction of Statelessness codified this requirement.²² Yet, the Convention on the Rights of the Child, which came into force in 1990, refrains from expressly mandating States to grant nationality to stateless children.²³ Article 7.2 partially compensates by instructing States to implement the registration and nationality requirements stipulated in Article 7.1.²⁴ Still, it remains restrictive for it requires Member States to comply under international instruments and their own domestic laws, which may lack the applicable implementation procedures and mechanisms.

While there is no statutory legal definition of ‘nationality’ or ‘right to nationality’ under international law, the 1954 Convention Relating to the Status of Stateless Persons defines a ‘stateless person.’²⁵ However, the definition relies on possession of nationality as the determining criteria.²⁶ Article 1 of the Convention defines a stateless person as a “person who is not considered as a national by any state under the operation of its law.”²⁷ It applies only to stateless persons whom the United Nations High Commissioner for Refugees is giving protection or assistance to. Moreover, Article 1.2(iii)(a)(b)(c) incorporates exemption clause Article 1(F)(a)(b)(c) of

16. *Id.* at art. 24(3).

17. *Id.* at art. 24(2).

18. *Id.*

19. Human Rights Comm., *General Comment No. 17: Article 24 (Rights of the child)*, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* 193, 195, U.N. Doc. HRI/GEN/1/Rev. 9 (Vol. 1) (2008).

20. *Id.*

21. *Id.*

22. G.A. Res 896 (IX), *Convention on the Reduction of Statelessness*, at art. I(a) (Aug. 30, 1961) (“A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) At birth, by operation of law, or...”); [hereinafter 1961 Statelessness Convention].

23. United Nations Convention on the Rights of the Child, art. 7, ¶¶ 1, 2, Nov. 20, 1989, 1577 U.N.T.S. 3.

24. *Id.*

25. 1954 Stateless Convention, *supra* note 7.

26. *Id.*

27. *Id.*

the Convention relating to the Status of Refugee Persons.²⁸ Both clauses identify the types of stateless persons or refugees that their respective Conventions do not heed. As legal treaties that focus on human rights, it is surprising—if not counter-productive—that the Conventions omit the highest evidentiary standards of proof to justify excluding these individuals. The Conventions operate on grounds of assumptions, allegations,²⁹ and “serious reasons for considering”³⁰ that an individual is guilty of these transgressions. The individual has committed a crime against peace or humanity, has committed a serious non-political crime before entering the current country of residence, or, has been guilty of acts contrary to U.N. purposes and principles.³¹

The 1961 Statelessness Convention expands on Article 15(2) of the UDHR. It identifies the means by which a person loses his nationality and is rendered stateless.³² The loss might be deliberate or self-inflicted such as when the individual is in the process of renouncing his citizenship to acquire that of another state.³³ Alternatively, the loss might be beyond a person’s control. That can occur when a State refuses to confer nationality rights at all or removes previously existing rights arbitrarily or without due process.³⁴ For example, a person might be born stateless, or a person might become stateless when his nationality is revoked.

This Article discusses situations where nationality rights are denied—or when **access to those rights is denied**. It will analyse whether these situations comprise illegalities or legal loopholes and how national and international law address or redress the issues. The main question to consider is if and how States exercise due process for the complainants, stateless or otherwise.

II. DISCUSSION

A. *The Right to Nationality and the Right to Citizenship*

There is no statutory or common law legal definition of ‘nationality’ or ‘citizenship’ in international law. Nor are there legal definitions of the rights

28. *Id.* art. I, ¶ 2(iii)(a)-(c); *See also* G.A. Res. 429 (V), United Nations Convention relating to the Status of Refugees, at art. I(F)(a)-(c) (July 28, 1951) [hereinafter 1951 Refugee Convention].

29. NEHEMIAH ROBINSON, CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS, ITS HISTORY AND INTERPRETATION (1955), *reprinted in* DIVISION OF INTERNATIONAL PROTECTION OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES 13-14 (1997).

30. 1954 Statelessness Convention, *supra* note 7, at art. I, ¶ 2(iii); *see also* 1951 Refugee Convention, *supra* note 28, at art. I, ¶ (F).

31. 1954 Statelessness Convention, *supra* note 7, at art. I, ¶ 2(iii)(a)-(c); *see also* 1951 Refugee Convention, *supra* note 28, at art. I, ¶ F(a)-(c).

32. 1961 Statelessness Convention, *supra* note 22, at art. V-VI, VIII-IX, X.

33. *Id.* at art. 7.

34. *Id.* at art. 1-6, 8-10.

to nationality or citizenship.³⁵ Therefore, it should be clarified that these two concepts or rights are not necessarily identical nor inter-changeable. They are similar. In practice, the distinction is represented by the types of documentation a State awards to a person. Proof of nationality tends to be in the forms of birth certificates that name the State of nationality,³⁶ passports, and nationality identification cards. The most valid and accepted proof of citizenship is a passport.³⁷

A discussion of how international forums and States have tended to interpret the concepts of nationality and citizenship follows.

1. What is the Right to Nationality?

The International Court of Justice (ICJ) attempted to define ‘nationality’ in 1955 in the *Nottebohm Case*.³⁸ It acknowledged that nationality has a legal component.³⁹ This significance was minimized, unfortunately, by the description of nationality as a “legal bond.” A legal bond is not a legal right.

The Court enunciated the doctrine of real and effective nationality to classify nationality as a legal bond.

“According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a **legal bond** having as its basis a social fact of attachment, a **genuine connection** of existence, interest and sentiments, together with the existence of reciprocal rights and duties.”⁴⁰

The ICJ observed that “[n]aturalization is not a matter to be taken lightly.”⁴¹ A person who changes his nationality breaks his bond of allegiance to the original State of nationality and makes a new bond of allegiance elsewhere.⁴² The ICJ found that Mr. Friedrich Nottebohm lacked a “link”⁴³ or persuasive nexus with Liechtenstein, the country for which Nottebohm abandoned his German nationality.⁴⁴ It reasoned that Mr. Nottebohm did not seem to have any long-standing connecting factors with Liechtenstein since he was born and raised in Germany and then moved to Guatemala as an adult

35. As far as the author is aware, many domestic legal systems lack written definitions of the terms ‘nationality’ or ‘citizenship’.

36. For example, a person born in a State may not be entitled to receive nationality or citizenship of that State. The birth country will issue a birth certificate that identifies the place of birth and nationality. Therefore, birth country A will issue a birth certificate that declares that the place of birth is country A and the nationality is of another country (country B).

37. Adam I. Muchmore, *Passports and Nationality in International Law*, 10 U.C. DAVIS J. INT’L L. & POL’Y 301, 306, 320 (2004).

38. *Nottebohm Affaire (Liech. v. Guat.)*, Judgment, 1955 I.C.J. 4 (Apr. 6).

39. *See Situation of Human Rights in the Dominican Republic*, Dec. 31, 2015, OEA/Ser.L/V/II.

40. *Liech. v. Guat.*, 1955 I.C.J.

41. *Id.* at 24.

42. *Id.* at 26.

43. *Id.* at 21-22.

44. *Id.* at 13.

for professional reasons.⁴⁵ Years later Mr. Nottebohm relinquished his German nationality voluntarily and acquired nationality of Liechtenstein.⁴⁶ His motive was for business reasons and not patriotism.⁴⁷

The facts of Nottebohm illustrate how the possession of nationality is a crucial transnational precautionary measure for those who cross borders for work and other purposes. Mr. Nottebohm had revoked his German nationality one month after World War II began when he applied for and acquired the nationality of Liechtenstein.⁴⁸ He did the latter to protect his assets in Guatemala and the U.S. He returned to Guatemala after obtaining his new nationality.⁴⁹ Guatemala initially recorded the new nationality⁵⁰ but reversed its stance in 1943.⁵¹ It arrested Nottebohm as a German enemy alien and deported him to the U.S. to be interned.⁵² In 1949 it expropriated his personal and business property.⁵³

A State's failure, however, to recognize an individual's change of nationality does not necessitate that the prior nationality will apply automatically. Guatemala's refusal to recognize Nottebohm's Liechtenstein identity effectively deemed Nottebohm as stateless. The ICJ's concurrence that Guatemala was not obliged to recognize the Liechtenstein nationality reinforced Nottebohm's statelessness status. The reality, though, was that the Liechtenstein nationality was valid. The acquisition of that nationality extinguished the previous German identity under the laws of Germany.⁵⁴

Fortunately, domestic legal systems today do not rely solely on the Nottebohm international law principles to grant nationality. In practise, individual States tend to use either or both of these criteria. A state may confer nationality by birthplace (*jus soli*) or by descent (*jus sanguinis*).⁵⁵ (1) Under the *jus soli* or 'right of the soil' principle, the State or territory where a person is born grants its nationality.⁵⁶ Thus, a child will receive nationality at birth.

45. *Id.* at 25-26.

46. *Id.* at 13, 15-16, 25.

47. *Id.* at 26 ("Naturalization was asked for not so much for the purpose of obtaining a legal recognition of Nottebohm's membership in fact in the population of Liechtenstein, as it was to enable him to substitute for his status as a national of a belligerent State that of a national of a neutral State, with the sole aim of thus coming within the protection of Liechtenstein but not of becoming wedded to its traditions, its interests, its way of life or of assuming the obligations-other than fiscal obligations-and exercising the rights pertaining to the status thus acquired.").

48. *Id.* at 13.

49. *Id.* at 16, 25.

50. *Id.* at 17.

51. *Id.* at 19-20, 25.

52. *Id.* at 25; *see also id.* at 34 (Read, J., dissenting); *see generally* Josef L. Kunz, *The Nottebohm Judgment (Second Phase)*, 54 AM. J. INT'L L. 536 (1960).

53. *Liech. v. Guat.*, 1955 I.C.J. at 10 (majority opinion) & 31 (Klaestad, J., dissenting).

54. *Id.* at 13-14, 16.

55. *See generally* Patrick Weil, *From Conditional to Secured and Sovereign: The New Strategic Link Between the Citizen and the Nation-State in a Globalized World*, 9 INT'L J. CONST. L., 615 (2011) (analyzing the origins of the *jus soli* and *jus sanguinis* principles).

56. *See id.* at 617-18.

The nationality is the individual's birth right. A child born in State X will receive the nationality of State X even if his parents are nationals of another State. (2) Under the *jus sanguinis* or 'right of blood' principle, an offspring receives nationality of a State of which a parent is a national.⁵⁷ The nationality is the child's birth inheritance. Thus, State A, of which a parent is a national, will award nationality to a child born in State A or State X.

2. What is the Right to Citizenship?

As discussed above, there is no legal definition of the right to nationality or the right to citizenship in international law. International instruments refer to 'nationality' but do not define [it], whereas domestic legal systems lack uniform legal interpretations of the terms 'nationality' and 'citizenship.' The statutes or constitutions of countries either omit any definitions or imply or expressly state that 'citizenship' is or is not the equivalent to 'nationality.'

To illustrate, U.S. federal laws can provide some clarity in comparison to the laws of some other countries. They define 'nationality' and 'citizen' and interpret the terms interchangeably in certain circumstances. The identification phrase "national of the United States" means a person who is a citizen.⁵⁸ The Fourteenth Amendment of the U.S. Constitution explains who can qualify as a citizen.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside."⁵⁹

In *United States v. Wong Kim Ark* (1898),⁶⁰ the U.S. Supreme Court specified that the *jus soli* principle applied to children of non-U.S. citizens.⁶¹ A child born in the U.S. was a U.S. citizen even if his parents resided in the U.S. lawfully as foreign nationals.⁶² The due process and equal protection clauses of the Fourteenth Amendment further prohibit any U.S. state from depriving individuals of their citizenship rights arbitrarily.⁶³

The Fourteenth Amendment applies in its entirety to citizens who are born or naturalized in a U.S. state.⁶⁴ Section 8 U.S.C. § 1408 limits the scope of the Fourteenth Amendment by excluding 'non-citizen nationals.'⁶⁵

57. *See id.* at 617.

58. 8 U.S.C. § 1101(a)(22) (2014).

59. U.S. CONST. amend. XIV, § 1.

60. *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

61. *Id.* at 702, 705.

62. *Id.* at 664, 694, 702, & 704.

63. *Id.* at 654-55, 688, 702, & 704-05; *see also*, U.S. CONST. amend. XIV, § 1; *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

64. U.S. CONST. amend. XIV.

65. *See* 8 U.S.C. § 1408 (1965).

Individuals who are born in the outlying possessions of American Samoa⁶⁶ and Swain Islands are U.S. nationals but not U.S. citizens.⁶⁷ As nationals, they are legally required to owe permanent allegiance to the United States.⁶⁸ This stipulation of loyalty and patriotism reflects the “legal bond” principle of real and effective nationality framed subsequently in *Nottebohm*.

In contrast, a country may fail to implement its nationality provisions according to its treaty obligations under international law. For example, the Dominican Republic actively enacts and amends nationality and citizenship legislation⁶⁹ but has not ratified the 1954 or 1961 Stateless Conventions. Yet it is bound to avoid creating statelessness situations under Article 20 of the American Convention.⁷⁰ It followed the *jus sanguinis* principle initially,⁷¹ but later constitutions adopted the *jus soli* principle with conditions. Two main categories of residents are exempt from birth citizenship: children of foreign diplomats and children of temporary or migrant workers.⁷² These individuals are classified as “in transit.”⁷³ The economic migrant category is the more vulnerable group. Economic migration to the Dominican Republic commenced in the early nineteenth century and mainly was from Haiti.⁷⁴ Many sugar cane and industrial workers settled in the State permanently and raised families.⁷⁵ However, they often remained undocumented and over time

66. Dudley O. McGovney, *Our Non-Citizen Nations, Who Are They?*, 22 CALIF. L. REV. 593, 628–32 (1934).

67. See 8 U.S.C. § 1101(a)(22)(A) (2014).

68. *Id.* at § 1101(a)(22)(B).

69. Ernesto Sagas & Ediberto Roman, *Who Belongs: Citizenship and Statelessness in the Dominican Republic*, 9 GEO. J. L. & MOD CRITICAL RACE PERSP. 35, 37 (2017).

70. ACHR, *supra* note 11, at art. 20.

71. Constitución Política de la República Dominicana, Nov. 6, 1844, at art. 7.

72. “Dominicans are: “All persons who were born in the territory of the Republic, with the exception of the legitimate children of foreigners who are resident in the Republic as diplomatic representatives or who are in the Republic in transit.” Constitución Política de la República Dominicana, June 20, 1929, at art. 8(2); Supreme Court of Justice of the Dominican Republic, Appeal Against the Unconstitutionality of the Ley General de Migración No. 285-04, December 14, 2005; Constitución Política de la República Dominicana, June 13, 2015, at art. 18, published in the Official Gazette No. 10805 of July 10, 2015, states:

“The following are Dominicans:

1. The sons and daughters of a Dominican mother or father;
2. Those who enjoyed Dominican nationality before the entry into effect of this Constitution;
3. People born in the national territory, with the exception of the sons and daughters of foreign members of diplomatic and consular legations, of foreigners that find themselves in transit or reside illegally in Dominican territory. *All foreigners are considered people in transit* as defined in Dominican laws” [emphasis added].”

73. Constitución Política de la República Dominicana, June 20, 1929, at art. 8(2); “. . . non-resident aliens are persons in transit.” Ley General de Migración No. 285-04, August 15, 2004, Official Gazette No. 1029, 1 art. 36.10 (which states, “[n]on-resident aliens are persons in transit.”); Constitución Política de la República Dominicana, June 13, 2015.

74. *Dominican Republic—A Life in Transit—The Plight of Haitian Migrants and Dominicans of Haitian Descent*, 27 AMNESTY INT’L 001, 1 (2007), <https://www.amnesty.org/en/documents/amr27/001/2007/en/>.

75. *Id.* at 1-2, 4.

have lost or abandoned their nationality rights in their States of origin.⁷⁶ The administrative reticence of the Dominican Republic to issue birth certificates renders the descendants of migrant workers stateless. It also prevents descendants from accessing basic necessities, such as obtaining state identity papers or applying for school registrations or employment.

The Dominican Constitution of 1865 expressly provided for automatic nationality. It granted birth nationality to all persons born in the Dominican Republic even if the parents were nationals of other states.⁷⁷ This provision was amended in 1929 to incorporate the “in transit” clause.⁷⁸ In 2004, the General Law on Migration No. 285-04⁷⁹ came into force and was applied retrospectively.⁸⁰ It expanded the “in transit” definition to include all non-resident aliens.⁸¹ That manoeuvre brought temporary or undocumented workers into its ambit, which meant that offspring did not qualify for Dominican nationality.⁸² The demoted status of these persons contradicts Article 20(1)(2) of the American Convention.

The Inter-American Court of Human Rights did not uphold the reasoning of the Dominican judiciary. In *Girls Yean and Bosico v. Dominican Republic* (2005),⁸³ the Court found that the “in transit” clause resulted in arbitrary deprivation of nationality.⁸⁴

“With regard to the right embodied in Article 20 of the Convention, the Court understands that nationality is a juridical expression of a social fact that connects an individual to a State. Nationality is a fundamental human right enshrined in the American Convention, and other international instruments, and is non-derogable in accordance with Article 27 of the Convention.”⁸⁵

...

“The importance of nationality is that, as the political and legal bond that connects a person to a specific State, it

76. *Id.* at 8-9; see also ‘Without Papers, I Am No One’: Stateless People in The Dominican Republic, 27 AMNESTY INT’L 2755, 5, 21 (2015), <https://www.amnesty.org/en/documents/amr27/2755/2015/en/>.

77. Constitución Política de la República Dominicana, Oct. 25, 1865, at art. 5 (Article 5 states, “Dominicans are: 1) All those who are born or will be born in the territory of the Republic, regardless of the nationality of their parents.”). See also *Situation of Human Rights in the Dominican Republic*, *supra* note 39, ¶ 146.

78. Constitución Política de la República Dominicana, June 20, 1929, at art. 8(2).

79. Ley General de Migración No. 285-04, *supra* note 73.

80. Int’l Convention on the Elimination of all Forms of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Dominican Republic*, ¶ 14, U.N. Doc. CERD/C/DOM/CO/12 (May 16, 2008).

81. General Law on Migration No. 285-04, *supra* note 73, at art. 36(10).

82. Dominican Republic, Supreme Court of Justice, serving as Constitutional Court, Judgement of December 14, 2005.

83. *Girls Yean & Bosico v. Dominican Republic*, Merits, Reparations, and Costs, Judgement, Inter-Am Ct. H.R. (ser. C) No. 130 (2005) [hereinafter *Girls Yean and Bosico*].

84. *Id.* ¶¶ 148-150, 174.

85. *Id.* ¶ 136.

allows the individual to acquire and exercise rights and obligations inherent in membership in a political community. As such, nationality is a requirement for the exercise of specific rights.”⁸⁶

The Dominican Republic’s unwillingness to grant documentation like birth certificates constitutes indirect discrimination based on ethnic origin.⁸⁷ This discrimination results in the direct loss of nationality that, in turn, violates the rights to juridical personality,⁸⁸ a name, and equal protection of the laws under Articles 3 and 18 of the American Convention.⁸⁹ The plaintiffs in *Girls Yean and Bosico* were two young girls who required access to their birth certificates as a pre-requisite to enrol in school.⁹⁰ Their inability to receive a basic education clearly would deprive them of future opportunities to participate and financially survive in society.

Although the judgment of the Inter-American Court is binding on the Dominican Republic,⁹¹ the Member State declined to implement the Order.⁹² Senate Resolution of the Dominican Republic of October 18, 2005 officially declared the judgment invalid. One month later the Supreme Court upheld the General Law on Migration No. 285-04.⁹³ The Constitution was amended in 2009 to prioritize the *jus sanguinis* principle. Article 18 expressly excludes children of foreigners who are “in transit” or are “residing illegally on Dominican territory”⁹⁴ from becoming nationals. The Constitutional Court interpreted the above provisions to apply retrospectively; in this way, it could approve or consent to the State’s mass revocation of nationality.⁹⁵ It held that

86. *Id.* ¶ 137.

87. *Id.* ¶ 192.

88. It is interesting that the Inter-American Court uses the phrase “juridical personality” to refer to natural persons or human beings; “juridical personality” applies to artificial persons and bestows legal status. See *M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors* (2019), 4 SCC 127 (India), ¶ 88-101. See also *Elvia Arcelia Quintana Adriano, The Natural Person, Legal or Juridical Person and Juridical Personality*, 4 PENN ST. J.L. & INT’L AFF. 363, 373-83 (2015).

89. *Girls Yean and Bosico* (ser. C) No. 130, ¶¶ 186-187.

90. *Id.* ¶ 109(6)-(21).

91. ACHR, *supra* note 11, at art. 68(1) (“The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.”).

92. Chapter V: Follow-Up on Recommendations Issued by the IACHR Based on the Working Group on Implementation of Human Rights Policies in the Dominican Republic, 2018, Report No. 072/19, OEA/Ser.L/V/II., ¶ 4.

93. Dominican Republic, Supreme Court of Justice, serving as Constitutional Court, Judgement of December 14, 2005.

94. Constitución Política de la República Dominicana, (Jan. 26, 2010), at art. 18 (“[D]ominicans [feminine] and Dominicans [masculine] are: 1. The sons and daughters of a Dominican mother or father; 2. Those who enjoy the Dominican nationality before the entry into effect of this Constitution 3. The persons born in the national territory, with the exception of the sons and daughters of foreign members of diplomatic and consular delegations, and of foreigners in transit or residing illegally in the Dominican territory. Any foreigner [masculine] or foreigner [feminine] defined as such in the Dominican laws is considered a person in transit.”).

95. República Dominicana Tribunal Constitucional [Constitutional Court of the Dominican Republic], Sept. 26, 2013, Sentencia TC/0168/13; see also *Expelled Dominicans*

undocumented migrants were “in transit” aliens, including those whose children were born after 1929.⁹⁶ The offspring were no longer Dominican nationals even if they possessed local birth certificates. The State re-registered [their] identity documents as birth records belonging to foreigners.⁹⁷ In effect, all current and future generations of Haitian migrants are foreigners in transit.⁹⁸

Although a State is entitled to formulate its nationality criteria,⁹⁹ the Dominican Republic nationality laws arguably are contrary to public policy due to their retrospective application. They breach Article 15 of the UDHR. The effects of revoking nationality from documented migrants retrospectively cause systemic discrimination. They deprive the individuals of equal protection of the laws. In addition, withholding access to local identity documents and social services to undocumented individuals are arbitrary state acts. The arbitrary conduct aggregates when the persons become stateless and risk deportation.¹⁰⁰ It is unfounded since the stateless status of these persons counters Article 20 of the American Convention and Article 24 of the ICCPR.

Like the expelled Dominicans of Haitian descent, the Rohingyas of Myanmar are a displaced population owing to systematic discrimination. Their citizenship, too, was revoked by operation of law. The 1982 Citizenship Law does not recognize the Rohingyas as a national race that settled in Myanmar pre-1824 though the Rohingyas are believed to have occupied the Rakhine State for at least two centuries.¹⁰¹ It disqualifies Muslim, Hindu, and Christian Rohingyas from acquiring citizenship and prompts intergenerational statelessness.

Unlike the Dominican Republic, the Myanmar State has not authorized the deportation of Rohingyas as an effect of citizenship laws, mandatory nationality criteria, or court judgments. The Rohingyas are stateless because

and Haitians v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 325 (Aug. 28, 2014).

96. David C. Baluarte, *Inter-American Justice Comes to the Dominican Republic: An Island Shakes as Human Rights and Sovereignty Clash*, 13 HUM. RTS. BRIEF 25, 28 (2006).

97. *Situation of Human Rights in the Dominican Republic*, *supra* note 39, ¶ 3.

98. See Constitución Política de la República Dominicana, June 13, 2015, *supra* note 72.

99. Manley O. Hudson, *Report on Nationality, Including Statelessness*, 2 Y.B. OF INT'L L. COMMISSION 7 (1952), https://legal.un.org/ilc/documentation/english/a_cn4_50.pdf (“[i]n principle, questions of nationality fall within the domestic jurisdiction of each State.”); See also Nottebohm, 1955 I.C.J. at 20.

100. According to Human Rights Watch at least 250,000 Dominicans of Haitian descent returned to Haiti between June 2015 and March 2018. These individuals were deported from the Dominican Republic. Other individuals were not officially deported but were coerced to leave the Dominican Republic under pressure or threat. HUMAN RIGHTS WATCH, *World Report 2019: Events of 2018*, 413 (2019).

101. See Haradhan Mohajan, *History of Rakhine State and the Origin of the Rohingya Muslims*, 2 THE INDON. J. OF SOUTHEAST ASIA STUD. 19 (2018); see also Burma Citizenship Law 1982 (unofficial translation of Pyithu Hluttaw Law No. 4 of 1982), art. 3 (stating, “[N]ationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D. are Burma citizens).

they lack citizenship; but they can remain in Myanmar if they choose to regardless of how inhumane or impractical the living conditions are for them. According to the U.N. Human Rights Council, ongoing State policies of persecution and human rights atrocities systematically oppress the Rohingyas.¹⁰² Hence many Rohingya¹⁰³ fled to neighboring Bangladesh and India in 1978, 1991, 2012, 2016 and 2017.¹⁰⁴ They continue to enter these countries and others.¹⁰⁵ These individuals are forced to become refugees as their identity and physical security is at risk in their country of birth or habitual residence.¹⁰⁶ In 2016,

“... the authorities embarked on a renewed effort to impose the National Verification Card on the Rohingya, a card that the latter had refused, seeing it as symbol of a discriminatory system that would entrench their status as “Bengali immigrants”. The card increasingly became a prerequisite for passing through checkpoints, gaining access to farmland, and for fishing. Intimidation and force were used, including at community meetings in the presence of the police and military, during which threats were made at gunpoint. At these meetings, villagers were told to “take the card or leave the country”; others, for example in Chut Pyin, were told by soldiers to accept it or be killed. Most Rohingya still refused.”¹⁰⁷

However, most Rohingya refugees are not automatically eligible for citizenship of Bangladesh or India under the *jus soli* or *jus sanguinis* principles. A primary reason is that the Rohingya, though stateless, are not denied the rights to continue residing in Myanmar. A Rohingya person

102. Human Rights Council Res. 34/22, U.N. Doc. A/39/64, at 20-23 (Sept. 12, 2018).

103. It should be clarified that the majority of the Rohingya population is Muslim while a minority are Hindu or Christian. Rohingyas of all three faiths are ineligible for Myanmar citizenship and have exited Myanmar as refugees.

104. *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, ICC-01/19, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ¶ 88-89 (Nov. 14, 2019).

105. According to Human Rights Watch, “More than 14,500 Rohingya fled to Bangladesh between January and November 2018 to escape ongoing persecution and violence in Myanmar, joining almost 1 million others from 2017.” HUMAN RIGHTS WATCH, *World Report 2019: Events of 2018*, 413 (2019).

106. *Application of the Convention (The Gambia v. Myanmar)*, ¶ 15 (Dec. 11, 2019, 10:00 a.m.), <https://www.icj-cij.org/en/case/178/oral-proceedings>. (Ms. Aung Sang Suu Kyi, agent of Myanmar, stated “Mr. President, it cannot be ruled out that disproportionate force was used by members of the Defence Services in some cases in disregard of international humanitarian law, or that they did not distinguish clearly enough between ARSA fighters and civilians. There may also have been failures to prevent civilians from looting or destroying property after fighting or in abandoned villages. But these are determinations to be made in the due course of the criminal justice process, not by any individual in the Myanmar Government.”)

107. Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar*, U.N. Human Rights Council, U.N. Doc. A/HRC/39/64, ¶ 46 (Sept. 17, 2018).

technically can return—albeit at his or her risk and subject to restrictive living conditions.¹⁰⁸ Myanmar has initiated efforts to repatriate refugees from the Host States¹⁰⁹ including negotiating bilateral agreements since 1992.¹¹⁰ In 2017 Myanmar and Bangladesh signed the “Arrangement on return of Displaced Persons from Rakhine State.” The Agreement has not yet been implemented fully, though it is intended to be “a win-win situation for both countries.”¹¹¹ Article 6(a)(ii) expressly exempts repatriation of forced Returnees.¹¹² It defines Returnees as persons who wish to return voluntarily.¹¹³ Article 9 does not limit the number of eligible Returnees. Yet, a Returnee must establish bona fide evidence of his or her prior residence in Myanmar.¹¹⁴ Article 7 classifies identity and residential documents, even if expired, as the requisite documentary evidence.¹¹⁵ Even then, repatriation Agreements and other attempts pose only partial solutions. The current cause of the Rohingya exodus is the 1982 Citizenship Act.¹¹⁶ The Act is discriminatory: (1) It withholds nationality from groups, including the Rohingya, arbitrarily.¹¹⁷ (2) It breaches Article 15(1) of the UDHR and (3) It should be revoked or amended to void the statelessness status of Rohingyas et al.

B. Determining the Right to Nationality

1. When a State Revokes Access to Nationality Rights

This section analyses cases where an individual loses access to his nationality rights as a direct result of state action. In this context, the individual is not at fault. He is rendered stateless as an additional repercussion.

International and domestic courts should consider Article 15 of the UDHR as a paramount factor when they assess whether to provide recourse

108. See *id.* ¶ 29.

109. Human Rights Council Res. 34/22, U.N. Doc. A/HRC/34/L.5, ¶ 5-8 (Apr. 2017). (Paragraph six states: “Also calls upon the Government of Myanmar to take further measures for a voluntary and sustainable return of all internally displaced persons, refugees and others who have had to leave Myanmar, including from the Rohingya minority, in safety, security and dignity and in accordance with international law[.]”)

110. Thomas K. Ragland, *Burma’s Rohingyas in Crisis: Protection of “Humanitarian” Refugees under International Law*, 14 B.C. THIRD WORLD L. J. 301, 302 (1994).

111. *The Republic of the union of Myanmar and the People’s Republic of Bangladesh signed the Arrangement on return of Displaced Persons from Rakhine State* (available at <https://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-8028>). The text of the Agreement can be found here: http://www.theindependentbd.com/assets/images/banner/linked_file/20171125094240.pdf.

112. Arrangement on Return of Displaced Persons from Rakhine State, Bangl-Myan, art. 6(a)(ii), Nov. 23, 2017.

113. *Id.*

114. See generally *id.*

115. *Id.* § 7.

116. See generally Mohajan, *supra* note 101, at 32.

117. *Id.* at 24.

and redress to stateless applicants. A forum that places lesser weight on Article 15(1)(2) is less likely to condemn and negate a State's arbitrary voidance of an individual's nationality rights. Alternatively, a forum that acknowledges the validity of Article 15(1)(2) generally awards or restores nationality rights and reverses the stateless status of the applicant. To illustrate, the African Court on Human and Peoples' Rights (ACtHPR) has expressly emphasised the significance of Article 15 by observing that the UDHR forms part of customary international law.¹¹⁸ Such acknowledgement is relevant, particularly in countries where constitutional and regional instruments do not provide for a right to nationality.¹¹⁹ The African Charter on Human and Peoples' Rights lacks an express clause that recognizes nationality rights.¹²⁰

In *Anudo Ochieng Anudo v. United Republic of Tanzania*, the court criticised the unrestrained acts of local and federal authorities to denationalize a Tanzanian citizen. As in the *Girls Yean and Bosico* case, the applicant's deprivation of documentation led to his immediate statelessness status. Both situations are inconsistent with human rights and public policy aims. The mass denationalization and deportation in the Dominican Republic ensued from authorized state policies and legislation, whereas municipal authorities singled out Anudo on random and unsubstantiated grounds. Ironically, Anudo was attempting to fulfil bureaucratic requirements by complying with a routine police verification of his passport.¹²¹ He lost access to his citizenship rights instead and was deported.¹²²

Anudo was born in Tanzania and possessed a birth certificate, passport, and voter's identity card.¹²³ A senior employee of a German NGO, he was detained after approaching the local police station in 2012 to submit his marriage application.¹²⁴ The police alleged that his passport had been issued in 2006 on the basis of forged documents that, among other things, contained discrepancies about the birth details of Anudos' father.¹²⁵ It confiscated the passport.¹²⁶ The State did not conduct any court or immigration hearings.¹²⁷

118. *Anudo Ochieng Anudo v. United Republic of Tanzania*, No. 012/2015, Judgment, ¶ 76 (Afr. Ct. on Hum. and Peoples' Rts. Mar. 22, 2018) (citing *U.S. Diplomatic and Consular Staff in Tehran* (Iran v. U.S.), Judgment, 1980 I.C.J. 3 (May 24); *South West Africa Cases* (Ethiopia v. South Africa; Liberia v. South Africa) Preliminary Objections, Judgment, 1962 I.C.J. 319 (Dec. 21); Constitution of the United Republic of Tanzania of 1977, § 9(f)).

119. *Id.* ¶¶ 74, 76-77 (with ¶ 77 citing *Liech. v. Guat.*, 1955 I.C.J.).

120. African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217 (entered into force Oct. 21, 1986).

121. *Anudo Ochieng Anudo v. United Republic of Tanzania*, No. 012/2015, Judgment, ¶¶ 4, 132 (Afr. Ct. on Hum. and Peoples' Rts. Mar. 22, 2018)

122. *Id.* ¶ 4

123. *Id.* ¶ 63.

124. *Id.* ¶ 4.

125. *Id.* ¶¶ 69-70.

126. *Id.* ¶ 67.

127. *Id.* ¶ 107.

It omitted to conduct DNA tests to confirm the identity of Anudo's father.¹²⁸ Two years later, the Minister of Home Affairs and Immigration sent Anudo a notice of "prohibited immigrant"¹²⁹ and revoked the Tanzanian citizenship.¹³⁰ The immigration authorities expelled Anudo to Kenya¹³¹ without any further due process or investigations.¹³² Kenya did not recognize Anudo as a national and labelled him as having 'irregular status.'¹³³ It returned Anudo to Tanzania, which barred his entry. Anudo was redirected to Sirari, a "no-man's land" border between the two countries.¹³⁴

The ACtHPR identified that arbitrary nationality revocations involve the breach of three fundamental rights. These fundamental rights are the right to nationality and the right not to be deprived arbitrarily; the right not to be arbitrarily expelled; and the right to have a court hear the grievance.¹³⁵

"International Law does not allow, save under very exceptional situations, the loss of nationality. The said conditions are: i) they must be founded on clear legal basis; ii) must serve a legitimate purpose that conforms with International Law; iii) must be proportionate to the interest protected; iv) must install procedural guaranties which must be respected, allowing the concerned to defend himself before an independent body."¹³⁶

The results of a DNA test would have provided direct confirmation of Anudo's identity and grounds for retaining or revoking his nationality.¹³⁷ Furthermore, Tanzania should have ascertained that Anudo was not a Kenyan citizen before it ordered his expulsion.¹³⁸ The resultant deportation to Kenya and Sirari rendered Anudo stateless.¹³⁹ Tanzania was responsible for making Anudo stateless even though it has not ratified the 1954 or 1961 Statelessness Conventions. It breached Article 15(2) of the UDHR¹⁴⁰ and Articles 7 and 14 of the ICCPR¹⁴¹ when it expelled and deported Anudo. The Court ordered

128. *Id.* ¶¶ 65, 85-86.

129. *Immigration Act* 1995 (Tas.) ss 10(f)(g), 11, 12.

130. *Anudo Ochieng Anudo v. United Republic of Tanzania*, No. 012/2015, Judgment, ¶ 64 (Afr. Ct. on Hum. and Peoples' Rts. Mar. 22, 2018)

131. *Id.* ¶ 65.

132. *Id.* ¶ 108.

133. *Id.* ¶¶ 11, 14.

134. *Id.* ¶ 4.

135. *Id.* ¶¶ 61, 132.

136. *Id.* ¶ 79, citing U.N. Secretary General, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, U.N. Doc. A/HRC/25/28 (Dec. 19, 2013).

137. *Id.* ¶¶ 86-87.

138. *Id.* ¶¶ 102-03.

139. *Id.* ¶ 78 (stating "[h]owever, the power to deprive a person of his or her nationality has to be exercised in accordance with international standards, to avoid the risk of statelessness.").

140. *Id.* ¶ 88.

141. *Id.* ¶¶ 95-96, 106, 115, & 132.

Tanzania to restore Anudo's nationality rights¹⁴² and amend the Immigration Act to guarantee a fair trial to *jus soli* citizens.¹⁴³ These measures thus necessitate the State to comply with Article 15 of the UDHR. The legislative amendment obliges the State to make access to justice rights and remedies available to its population. The right of equal access to justice, or due process, permits applicants to exercise their substantial and procedural rights and exhaust all local administrative and judicial recourse.¹⁴⁴

A general right of recourse is a fundamental protection for an individual. It must not apply on a selective or elitist basis. Rather, it, alongside the equal protection of the laws, must extend to all inhabitants that are physically present in a territory. The scope of application should not be confined to nationals or legal and permanent residents—but should encompass—non-nationals, temporary residents, irregular migrants, and illegal aliens. In Anudo the ACtHPR invoked Article 15 of the UDHR to recommend the restoration of nationality rights.¹⁴⁵ In contrast, the European Court of Justice (ECJ) did not rely on Article 15 of the UDHR in *The Queen v. Secretary of State for the Home Department ex parte Kaur*¹⁴⁶ to urge that the UK award nationality rights to a British Overseas Citizen (BOC), who was rendered stateless as a result of preferential UK legislation.¹⁴⁷ The British Nationality Act 1981¹⁴⁸ denied certain Commonwealth citizens, such as Kenyan born Asians, the right of abode in the UK without Home Department authorization.¹⁴⁹ Since the ECJ did not even mention the UDHR or the ICCPR in the *Kaur* judgment, there was no possibility of relief for the Applicant.

142. *Id.* ¶ 132.

143. *Id.* ¶ 132.

144. Directorate-General for Internal Policies, Study for the PETI Committee, Effective Access to Justice, PE 596.818, at 11, 21-27 (Nov. 2017) [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596818/IPOL_STU\(2017\)596818_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596818/IPOL_STU(2017)596818_EN.pdf); *see also* Anudo Ochieng Anudo v. United Republic of Tanzania, No. 012/2015, Reparations, (Afr. Ct. on Hum. and Peoples' Rts. Sept. 8, 2020), <https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/b91/8e7/5f5b918e7bfcc346048602.pdf>. (In paragraph 12 the Court observed that "the record also shows that the Applicant's status as a refugee in Uganda has made difficult the communication with his Counsel as regards consultations on the Reply to the Respondent State's response on and to provide the necessary information in that regard." Accordingly, the Court correctly provided the Applicant with access to justice. In paragraph 13 the Court held that, "in view of the afore-mentioned exceptional circumstances and in the interests of justice, it is therefore appropriate to re-open pleadings in this matter.").

145. Anudo Ochieng Anudo v. United Republic of Tanzania, No. 012/2015, Judgment, ¶ 76 (Afr. Ct. on Hum. and Peoples' Rts. Mar. 22, 2018)

146. Case C-192/99, *The Queen v. Sec'y of State for the Home Dep't ex parte Kaur*, 2001 ECR I-1237 [hereinafter *Kaur*].

147. *See* Randall Hansen, *The Kenyan Asians, British Politics, and the Commonwealth Immigrants Act, 1968*, 42(3) THE HIST. J. (1999), 809 at 810, 815-17, & 832-33.

148. British Nationality Act 1981, c. 61, § 4.

149. Case C-192/99, *The Queen v. Sec'y of State for the Home Dep't ex parte Kaur*, 2001 ECR I-1237, ¶¶ 11, 13.

Manjit Kaur was born in Kenya in 1949.¹⁵⁰ She was of Indian descent and qualified as a *jus soli* Citizen of the United Kingdom and Colonies ('CUKC') through the British Nationality Act, 1948.¹⁵¹ The CUKC category offered members unrestricted entry to the UK.¹⁵² The British Nationality Act 1981 replaced the CUKC rank with the lesser BOC rung.¹⁵³ As a BOC, Kaur was not considered a British citizen and lacked the rights to enter the UK freely and live there permanently.¹⁵⁴ She was permitted to enter the country on a temporary visa basis.¹⁵⁵ The Home Office rejected her applications to extend her stay.¹⁵⁶ Ms. Kaur claimed that the British Nationality Act 1981 discriminated against Britons of Asian origin.¹⁵⁷ She could not exercise her fundamental right to reside in the UK because she was not automatically entitled to become a British national as a BOC.¹⁵⁸ Not only did she lack mobility rights in the UK as a non-British national, but she was denied as well of the rights to enter and work in the European Union (EU).¹⁵⁹ Britain was a Member State of the EU. Its nationals were also EU citizens under Articles 8 and 8(1)(a) of the E.C. Treaty (now, after amendment, Articles 17 EC and 18 EC):

Article 8¹⁶⁰

1. Citizenship of the Union is hereby established.

Every person holding the nationality of a Member State shall be a citizen of the Union.

Article 8a¹⁶¹

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States.

150. *Id.* ¶ 11.

151. British Nationality Act 1948, 11 & 12 Geo. 6 c. 56, § 4. (Stating, "[s]ubject to the provisions of this section, every person born within the United Kingdom and the Colonies after the commencement of this Act shall be a citizen of the United Kingdom and the Colonies by birth."). *See also* Case C-192/99, *The Queen v. Sec'y of State for the Home Dep't ex parte Kaur*, 2001 ECR I-1237, at ¶ 8.

152. *East African Asians v. the United Kingdom*, App. Nos. 4403/70-4419/70, 4422/70, 442J/70, 44J4/70, 4443/70, 4476/70-4478/70, 4486/70, 4501/70 and 4526/70-4530/70 (joined) Eur. H.R. Rep. 2, 11 (1973).

153. Case C-192/99, *The Queen v. Sec'y of State for the Home Dep't ex parte Kaur*, 2001 ECR I-1237, ¶ 10(c).

154. *Id.* ¶ 11.

155. *Id.* ¶ 12.

156. *Id.* ¶¶ 12-14.

157. *Id.* ¶ 17.

158. *Id.* ¶ 10(c).

159. *Id.* ¶ 14.

160. Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C 191) 7.

161. *Id.* at art. 8(a).

The ECJ pointed out that it was not the Court's role to dispute a Contracting State's nationality laws. It reiterated that each country has the right to determine its nationality laws¹⁶² and "[u]nder international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality."¹⁶³ The UK had followed the correct implementation process to validate its laws. It had incorporated nationality rights in its domestic legislation and complied with notification procedures under European law.¹⁶⁴ Ms. Kaur was not a British citizen nor a national of another Member State. How then could she avail of the inter-mobility benefits of an EU citizen? She could not freely enter, reside and work in any Member State including Britain. Therefore, Ms. Kaur was not entitled to freedom of movement rights throughout the EU.

The Court rightly did not identify the applicant as an EU citizen. However, the judgment is incomplete for it neglects to consider the applicant's statelessness status. Ms. Kaur was stateless as a direct cause of the UK's biased nationality and immigration laws and policies. It is surprising that Kaur fails to observe the responsibilities of an EU Member State not to contribute to statelessness,¹⁶⁵ specifically as the UK had voted in favour of passing the UDHR and ratified both the 1954 and 1961 Statelessness Conventions. These legislative measures alone were sufficient for the ECJ to examine the UK's international law obligations even though the UK did not support the Community counterpart treaty. The UK never signed the 1997 European Convention on Nationality.¹⁶⁶ Yet still, the Court should have acknowledged the statelessness issue in Kaur in view of the Convention's Preamble which declares that the Council of Europe aims to avoid statelessness cases as far as possible.¹⁶⁷

162. *Id.* ¶¶ 15.1(1)(c), 19-21.

163. *Id.* ¶ 19 (citing Case C-369/90 Micheletti and Others v. Delgación del Gobierno en Cantabria, 1992 E.C.R. I-4239 at ¶ 10).

164. *Id.* ¶¶ 20-25.

165. See U.N. Secretary General, *The Problem of Statelessness*, ¶ 67(15), U.N. Doc. A/CN.4/56 (May 26, 1952) (Paragraph 67(15) states: "The nationality laws of the United Kingdom and the Colonies are such that the possibilities of statelessness arising thereunder are reduced to the minimum. In particular, no person can be born stateless in the United Kingdom and the Colonies; and no person born within the United Kingdom and the Colonies can at any time become stateless by the sole operation of United Kingdom law.")

166. *European Convention on Nationality*, Nov. 6, 1997, E.T.S. 166.

167. *Id.* at pmb., art. 4(a)-(c), & art. 18.

The reticence of the U.K. legal system and the ECJ to assess the applicant's statelessness issue contrasts with the subsequent approach of the U.K. High Court in *The Queen on the application of MK (a child by her litigation friend CAE) v. The Sec'y of State for the Home Dep't*, [2017] EWHC (Admin) 1365 [1], [4], [9], [13], [36]-[37], [42], [48]-[49].

The High Court held that a seven-year-old stateless child was entitled to acquire British citizenship under Paragraph 3 of Schedule 2 to the British Nationality Act 1981. The child was born in England. The *jus soli* principle did not apply to her as her parents were illegal aliens from India. However, the child was stateless by choice. She was stateless only because her parents had not registered her birth as per the Citizenship Act 1955 (India) as amended (emphasis added). Registration was mandatory to assume Indian nationality.

In contrast, the European Court of Human Rights (ECtHR) has expanded the due process rights of stateless applicants. The European Convention of Human Rights¹⁶⁸ (ECHR) lacks a right to nationality clause, but the Court compensates for the defect by citing Article 8. Article 8(1) guarantees the rights to respect for an individual's home and private life.¹⁶⁹ Article 8(2) limits state interference with these prerogatives.¹⁷⁰ The Court relies upon these grounds to justify that a stateless person may incur a right of ongoing residence in an EU state and avoid deportation.

Article 8¹⁷¹

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In *Hoti v. Croatia*, the ECtHR declared that the State has a positive obligation under Article 8 to provide a fair administrative and judicial

The High Court did not encourage the applicant to seek Indian nationality as a priority or sole option. India does not permit dual nationality. Surprisingly, the High Court focused on the child's present status as a stateless person and not on the very tangible possibility that the statelessness status could be reversed in the past, present, and future. It applied a strict interpretation of ¶ 3(1)(a) to find that applicant "is and always has been stateless." From this rigidly literal interpretation, the High Court then took an extremely liberal and expansive stance. It dismissed the fact that the applicant could register as an Indian citizen if her parents chose to do so on her behalf. The reality was that the applicant was stateless at the present time, and it was irrelevant if the applicant had the ability to acquire a nationality. Furthermore, the High Court observed optimistically that the parents could benefit if the child secured British nationality.

"I recognise of course that this conclusion opens an obvious route to abuse. Indeed, the facts of the present case might be said to be an example of abuse. M and F are both overstayers. Both have sought, and been refused, further leave. They have preferred to allow C to be stateless all her life to date rather than to register her birth and obtain Indian nationality for her. Yet C's right to British nationality (and the consequence that she will not be or become a national of India) will now immeasurably improve M and F's prospects of being allowed to stay in the United Kingdom. But the Secretary of State's position in this case on the one hand, and the authorities on the other, necessarily lead to this result." (¶ 37).

Perhaps the High Court's reasoning was motivated by respect for the Applicant's rights to private and family life and her home under Article 8 of the European Convention of Human Rights (ECHR)? This would conflict, though, with the High Court's dismissal of Article 8 earlier in the judgment (¶ 42).

168. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (*entered into force* Sept. 3, 1953).

169. *Id.* at art. 8(1).

170. *Id.* at art. 8(2).

171. *Id.* at art. 8.

process.¹⁷² It is noteworthy that the Court is referring to the Host State in particular since the stateless applicant had all his social ties and connecting factors there. Badri Hoti had lived in Croatia for four decades on a temporary resident visa basis.¹⁷³ The Court deemed that Croatia had erred in 1993-1995 by removing Hoti's name from the registers of domicile after denying citizenship.¹⁷⁴ The act of erasing documented identification was arbitrary and unlawful.¹⁷⁵ That State imposed anonymity also put Hoti in a "legal limbo."¹⁷⁶ It meant that Hoti could not access public benefits like health insurance or his pension.¹⁷⁷ Nor could Hoti work legally or move freely within Croatia.¹⁷⁸

The absence of identity documentation in Croatia augmented the ECtHR view that the applicant was a stateless migrant, and the Court initially found that the applicant was stateless on these grounds.¹⁷⁹ The applicant was of Albanian descent.¹⁸⁰ His parents were political refugees who relocated to the former SFRY (Socialist Federal Republic of Yugoslavia and now Kosovo) before his birth.¹⁸¹ They possessed SFRY citizenship at the time the applicant was born in 1962.¹⁸² On the contrary, Hoti's birth certificate did not mention the citizenship of the SFRY or of any country, including Albania.¹⁸³ In 2015 the Albanian Embassy in Croatia disclosed that Hoti was never an Albanian citizen.¹⁸⁴ The fact that no State claimed Hoti as a national clearly characterized Hoti as a 'stateless person' under Article 1(1) of the 1954 Convention.¹⁸⁵

172. Hoti v. Croatia, App. No. 63311/14, ¶¶ 118, 123 (2018), <http://hudoc.echr.coe.int/eng?i=001-182448>

173. *Id.* ¶¶ 7, 7-17, 27, 30, 45-47, 55-57, & 125-127.

174. *Id.* ¶¶ 52, 89, 90, 97, 104, & 114. The Government of Croatia disputed it had implemented an "erasure process" against former SFRY nationals after June 1991 (¶ 104).

175. Kuric v. Slovenia, 2012-IV Eur. Ct. H.R. ¶¶ 31-33, 360-362 (Mar. 12, 2014).

176. Hoti v. Croatia, App. No. 63311/14, ¶ 97 (2018), <http://hudoc.echr.coe.int/eng?i=001-182448>; see also United Nations High Commissioner for Refugees [UNHCR], Submission by the Office of the UNHCR in the Case of Bedri Hoti v. Croatia, Application No. 63311/14, ¶ 5.1 (Filed July 3, 2015) <https://www.refworld.org/docid/560a2cdb4.html> (stating that non-access to state identity documents placed applicants in a "legal limbo"). The Applicants in Girls Yean and Bosico (ser. C) No. 130 faced similar obstacles.

177. Hoti v. Croatia, App. No. 63311/14, ¶¶ 97-98 (2018), <http://hudoc.echr.coe.int/eng?i=001-182448>

178. *Id.* ¶¶ 52, 99.

179. *Id.* ¶¶ 116-117, 128.

180. *Id.* ¶ 5.

181. *Id.* ¶¶ 6-7, 109.

182. *Id.* ¶¶ 93, 127.

183. *Id.* ¶¶ 24, 34, 54, 58, 110, 127, 130, & 138.

184. *Id.* ¶¶ 25, 37, & 57.

185. *Id.* ¶¶ 65, 93 (Paragraph 93 explains that after the SFRY was dissolved, various State documents indicated but did not clearly or expressly name any nationality, and further explaining the Court found the applicant was not responsible for inconsistencies and did not intend to "mislead it with regard to his citizenship.").

However, the applicant had resided in Croatia from the age of seventeen onwards.¹⁸⁶ He had established all of his connecting factors with that country. The sole result was his long term and uninterrupted presence there.

Hoti had relocated to Croatia by himself. He was permitted to enter as an Albanian refugee.¹⁸⁷ As a minor, he shared his parents' refugee status until his eighteenth birthday.¹⁸⁸ He settled in the town of Novska and rarely left the community.¹⁸⁹ Though his job prospects were limited he worked mainly as a car mechanic or farm hand.¹⁹⁰ The applicant's attempts to integrate in society and become economically independent demonstrated a "strong interest to live in Croatia."¹⁹¹

The issue in Hoti was not whether Croatia should grant nationality to the applicant but whether Croatia should terminate a stateless person's right of abode.¹⁹² The ECtHR determined that the stateless Applicant had an insecure residence status that was exacerbated by the State's refusal to validate that foothold.¹⁹³ This dismissal infringed the Applicant's Article 8 rights to family and private life.¹⁹⁴ The Applicant lived in Croatia alone. He was estranged from his siblings who were legal residents of other Member States,¹⁹⁵ and he had opted not to marry or have children due to his insecure residence status as a temporary migrant.¹⁹⁶ His dearth of family ties had restricted his enjoyment of rights guaranteed by Article 8(1).¹⁹⁷

It is significant that the Court confirmed that Article 8 safeguards the social identity¹⁹⁸ of all persons including migrants. Social identity represents the individual's nexus and social ties with his community.¹⁹⁹ The ECtHR clarified how Article 8 encourages basic social interaction as a participatory right.

186. *Id.* ¶ 12.

187. *Id.* ¶¶ 6-7, 18, & 50.

188. *Id.* ¶ 50.

189. *Id.* ¶ 125.

190. *Id.* ¶¶ 14, 26, 32, & 133.

191. *Id.* ¶ 34.

192. *Id.* ¶¶ 65, 75, 79, & 117.

193. *Id.* ¶¶ 75, 79.

194. *Id.* ¶¶ 75, 142.

195. *Id.* ¶¶ 7, 48.

196. *Id.* ¶¶ 21, 75, 117, 119, 122, & 126.

197. *Id.* ¶ 119.

198. *See* *Genovese v. Malta*, App. No. 53124/09, Eur. Ct. H.R. ¶ 33 (2011) (stating, "[h]owever, as the Court has observed above, even in the absence of family life, the denial of citizenship may raise an issue under Article 8 because of its impact on the private life of an individual, which concept is wide enough to embrace aspects of a person's social identity. While the right to citizenship is not as such a Convention right and while its denial in the present case was not such as to give rise to a violation of Article 8, the Court considers that its impact on the applicant's social identity was such as to bring it within the general scope and ambit of that Article.")

199. *Hoti v. Croatia*, App. No. 63311/14, ¶¶ 119, 131 (2018), <http://hudoc.echr.coe.int/eng?i=001-182448>

“Article 8 protects, inter alia, the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual’s social identity. Thus, the totality of social ties between a migrant and the community in which he or she lives constitutes part of the concept of private life under Article 8.”²⁰⁰

Deportation further disrupts a stateless candidate’s life. Its “disproportionate repercussions” conflict with the aims of Article 8.²⁰¹ It should be emphasized that the applicants in Kaur and Hoti had entered their Host States lawfully. Kaur and Hoti were rendered stateless later due to political and legislative changes in those countries. These circumstances were beyond the control of the Applicants; they were not foreseeable. Furthermore, international law concedes that States have the autonomy to determine their nationality laws.²⁰² The Host States were not obligated, therefore, to grant Kaur or Hoti permanent residences nor nationality. Similarly, a country where a stateless individual enters illegally is not compelled to retain the person. Its right to decide applies whether the individual enters wilfully (he has given prior consent to travel and enters on his own behalf) or involuntarily (he is accompanied, smuggled or trafficked by another party). For this reason, the answer is negative to the following issues. Must a country grant nationality to end an alien’s statelessness status? Alternatively, must a country not deport the stateless person and permit him to reside lawfully?

In *Al-Kateb v. Godwin*, the answer remains no, although the issue was less straightforward as the stateless appellant was of Palestinian origin and had previously resided in Kuwait legally.²⁰³ The applicant, Ahmed Ali Al-Kateb, had paid human traffickers U.S. \$4,000 in Jordan to smuggle him into Australia.²⁰⁴ He procured a fake Iraqi passport to travel from Jordan to Indonesia from where he sailed to Australia in 2000.²⁰⁵ The seven-meter fishing boat broke down at sea and was rescued by the Australian navy.²⁰⁶ For unexplained reasons, the Appellant did not produce the passport to any State authorities. He claimed that he did not have a passport or visa to enter the

200. *Id.*

201. *Id.*

202. Alfred Verdross, *The Plea of Domestic Jurisdiction before an International Tribunal and a Political Organ of the United Nations*, 28 HEIDELBERG J. OF INT’L LAW 39-40 (1968); See also Maximilian Koessler, “SUBJECT,” “CITIZEN,” “NATIONAL,” AND “PERMANENT ALLEGIANCE,” 56 YALE L.J. 58, 71-72 (1946) (discussing complications resulting from nationality determined by domestic rather than international law).

203. *Al-Kateb v. Godwin* (2004) 219 CLR (Austl.) the High Court of Australia heard the case at the same time as *Minister for Immigration and Multicultural and Indigenous Affairs v. Al Khafaji* (2004) 208 ALR 201 (Austl.) and *Behrooz v. Secretary of the Department of Immigration and Multicultural and Indigenous Affairs* [2004] HCA 36 (Austl.)

204. See *Escape from a life in limbo*, THE SYDNEY MORNING HERALD (Oct. 27, 2007), <https://www.smh.com.au/national/escape-from-a-life-in-limbo-20071027-gdrg3g.html>.

205. *Id.*

206. *Id.*

country.²⁰⁷ He was detained as an unlawful non-citizen under s. 189 of the Migration Act 1958.²⁰⁸ The Department of Immigration and Multicultural and Indigenous Affairs dismissed al-Kateb's application for a protection visa to reside in the community as a legal refugee.²⁰⁹ The Refugee Review Tribunal and then the Federal Court denied the appeal.²¹⁰ As a result, Al-Kateb re-evaluated his circumstances and sought an exit.

"On 19 June 2002, the appellant himself indicated to the Department that he wished to leave Australia and to return to "Kuwait, and if you cannot please send me to Gaza". He later, on 30 August 2002, signed a form addressed to the Minister stating "I wish voluntarily to depart Australia, and ask the Minister to remove me from Australia as soon as reasonably practicable". Section 198(1) of the Act requires removal of such unlawful non-citizens "as soon as reasonably practicable"."²¹¹

Australia endeavoured to deport al-Kateb to Egypt, Jordan, Kuwait, Syria and the Palestinian Territories, but the jurisdictions refused to accept the alien.²¹² It was unlikely in the foreseeable future and was not reasonably practicable²¹³ that the Appellant would be released from the mandatory administrative detention enforced by sections 196 and 198.²¹⁴

The issue became then whether the Migration Act 1958 could impose indefinite detention. Al-Kateb remained in custody meanwhile until 2003 when the Federal Court approved an interlocutory consent order to issue a bridging visa.²¹⁵ He was permitted to live in Sydney on a temporary and conditional basis without the privileges to work or study or receive state benefits including healthcare.²¹⁶ However, he returned to detention in 2004 when the High Court of Australia ruled that the Migrant Act imposed indefinite detention if it was not reasonably practical to deport a detainee or grant that person local residence rights.²¹⁷ The High Court stressed that the clear and unambiguous text of the Act did not permit any other

207. *Al-Kateb v. Godwin* (2004) 219 CLR ¶¶ 79, 82, & 272 (Austl.).

208. *Migration Act 1958* (Cth) s 62 (Austl.) (Detention of unlawful non-citizens (3) If an officer knows or reasonably suspects that a person (other than a person referred to in subsection (3A)) in an excised offshore place is an unlawful non-citizen, the officer must detain the person).

209. *Al-Kateb v. Godwin* (2004) 219 CLR ¶¶ 2, 99, & 273-274 (Austl.).

210. *Id.* ¶ 100.

211. *Id.* ¶ 102.

212. *Id.* ¶¶ 2, 103.

213. *Id.* ¶¶ 11, 206.

214. *Id.* ¶¶ 1, 2, 34, 35.

215. *Id.* ¶¶ 107, 280. The term 'bridging visa' refers to a Removal Pending Bridging Visa. It is effective while the application for a substantive visa is assessed.

216. *Id.*; *Escape from a life in limbo*, *supra* note 204.

217. *Al-Kateb v. Godwin* (2004) 219 CLR ¶¶ 298, 303 (Austl.).

interpretation.²¹⁸ The judiciary's role was confined to applying the legislation enacted by Parliament.²¹⁹

The Immigration Minister subsequently applied her discretionary powers to review Al-Kateb's status and ordered a bridging visa in 2005.²²⁰ Al-Kateb re-entered the community. Two years later, the Applicant received a permanent visa to remain in the country.²²¹ Therefore, the Government did not award the stateless Applicant nationality. Instead, it ceased all further prospects of unsanctioned stay by offering Al-Kateb permanent residence in Australia. This indeed was a beneficial outcome for Al-Kateb: Al-Kateb avoided detention, deportation and insecure residence status. Australia was entitled otherwise to deport Al-Kateb²²² under Article 31(1) of the 1954 Statelessness Convention since Al-Kateb was an illegal alien.²²³

It is a matter of concern that the Al-Kateb judgment and the State, which accommodated the Applicant by granting bridging and permanent visas, do not take into account that the Applicant was neither fully stateless nor a persecuted refugee.²²⁴ (1) Al-Kateb had entered Australia wilfully and as a migrant.²²⁵ (2) He was a "stateless Palestinian"²²⁶ who had chosen to enter Australia illegally to improve his standard of living. Australia provided financial and political stability in comparison to many other countries. These factors qualified Al-Kateb as an economic migrant. Additionally, he was a "stateless Palestinian" who had grown up in Kuwait and was displaced as a result of the 1990-1991 Gulf War.²²⁷ He had resided with his family, which like all expatriates, was physically present in the country on a temporary family or work visa basis.²²⁸ Temporary residence permits are subject to

218. *Id.* ¶ 298.

219. *Id.* ¶ 303.

220. Peter Billings, *Whither Indefinite Immigration in Australia? Rethinking Legal Constraints on the Detention of Non-citizens*, 38 UNSW L.J. 1386, 1396-98 (2015).

221. *Id.*

222. *See Escape from a life in limbo*, *supra* note 204 (explaining that, while Egypt, Jordan, Kuwait, Syria and the Gaza Strip refused to accommodate him, Al-Kateb confirms that there were other countries Australia could have attempted to deport him to. "Al-Kateb remembers the Immigration Department asking: 'Can you go to Syria or Jordan or Egypt, can you sign a paper for this?' He says he replied: 'Anywhere in the world you want to send me, send me. I cannot live in this place ... After a while they told me we cannot find anywhere in the Middle East and suggested, what about Asia: Malaysia, Vietnam or Thailand. I told them, wherever you want.'")

223. *Al-Kateb v. Godwin* (2004) 219 CLR ¶ 106 (Austl.) ("Article 31 obliges the Contracting States not to 'expel a stateless person lawfully in their territory save on grounds of national security or public order' (emphasis added).")

224. *See* Transcript of Proceedings, *Behrooz v Secretary of Dept. Immgr. & Indigenous & Multicultural Affairs*, *SHDB v Godwin*, *Minister for Immgr. & Multicultural & Indigenous Affairs v Al Khafaji* [2003] HCATrans 456 (Nov. 12, 2003) (discussing applicants from similar backgrounds).

225. *Al-Kateb v. Godwin* (2004) 219 CLR (Austl.).

226. *Id.*

227. *Al-Kateb v. Godwin* (2004) 219 CLR (Austl.); *Escape from a life in limbo*, *supra* note 204.

228. Amiri Decree No. 17 of 1959 (Aliens Residence Law), last amended by: Law No. 6 of 2011 (Kuwait):

conditional renewal.²²⁹ Palestinian individuals were permitted to enter and reside in Kuwait if they held Jordanian passports or mere travel documents from Egypt or other States.²³⁰ Many fled Kuwait during and after the Gulf War.²³¹ Kuwait chose not to renew the residence permits of individual Palestinians and nationals of other countries who had left or remained on Kuwaiti territory.²³²

Prior to the Gulf War, Kuwait ensured a degree of financial and political stability even though it has never guaranteed nationality rights to expatriates. It does not extend citizenship on a *jus soli* basis to foreigners.

Article 2 of the Nationality Law of Kuwait, 1959²³³

Any person born in, or outside, Kuwait whose father is a Kuwaiti national shall be a Kuwaiti national himself.

Thus, Article 2 explicitly makes clear that foreign nationals are not entitled to Kuwaiti citizenship. All locally and non-locally born expatriates have a guest residence status throughout their stay in the State. For these

“Article 9: Every foreigner wishing to reside in Kuwait must obtain a residence permit from the Head of the Police & Public Security Department.

Article 11: Every foreigner wishing to reside in Kuwait must obtain a residence permit from the Head of the Police & Public Security Department.

Article 12: A foreign national may obtain a regular residence permit for a period that does not exceed 5 years as long as his passport is valid for the length of that period. Once the permit expires, s/he must leave the country, unless a request to renew the permit was submitted one month before its expiry. If the request is denied then s/he must leave within one week of being notified of the denial if the permit has already expired.”

Article 16: The Head of the Police & Public Security Departments may issue a written deportation order for any expatriate even if s/he holds a valid residence permit in any of the following situations

1. If a judgment was issued from court for the deportation of the expatriate.
2. If the expatriate has no means of living.
3. Deportation can be issued in cases of violation of public order, public security or public morality.

Article 19: An expatriate who has been deported may not return to Kuwait unless special permission is obtained from the office of the Minister of Interior in Kuwait.”

229. *Id.*

230. *Nowhere To Go: The Tragedy Of The Remaining Palestinian Families In Kuwait*, MIDDLE EAST WATCH, October 23, 1991, at 1, 3-6.; Jamil Hilal, *Assessing the Impact of Migration on Palestinian Society in the West Bank and Gaza*, 2007/02, EUROPEAN UNIVERSITY INSTITUTE RSCAS, EUROPEAN INSTITUTE, FLORENCE: ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES, 16 n.36 (2007).

231. Sarah Adamczyk, *Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip*, NORWEGIAN REFUGEE COUNCIL 10, 56 (Jan. 2012)

232. *Id.* at 38-39, 56; PEACE TO PROSPERITY: A VISION TO IMPROVE THE LIVES OF THE PALESTINIAN AND ISRAELI PEOPLE (Jan. 2020), <https://www.un.org/unispal/document/peace-to-prosperity-a-vision-to-improve-the-lives-of-the-palestinian-and-israeli-people-us-government-peace-plan/>

233. Ministerial Decree No. 15 of 1959 (Nationality Law), Last amended by: Law No. 33 of 2004 (effective June 27, 2004) (Kuwait).

reasons, the perspective of the U.S. Court of Appeals for the Ninth Circuit in *El Himri v. Ashcroft*²³⁴ is inaccurate. In this case, the Court considered the asylum claim of Palestinian Applicants who had exited Kuwait.²³⁵ It viewed the Appellants as victims of persecution and economic discrimination. “The El Himris have carried their burden to show a “clear probability” that they would suffer economic persecution if they returned to Kuwait” and “Even if the El Himris were fortunate enough to avoid violent persecution upon their return to Kuwait, they would not be able to avoid the state-sponsored economic discrimination that has been enacted against Palestinians living in Kuwait since the end of the Gulf War.”²³⁶ The risks and effects of state sponsored economic discrimination would support grounds of persecution if the applicants were nationals of Kuwait and had the legal rights to reside in Kuwait continuously. However, like all foreign residents, the Applicants were not entitled to automatic and lifelong residence.²³⁷ The Canadian Federal Court of Appeal construed the issue more precisely in *Thabet v. Canada (Minister of Employment and Immigration)*²³⁸ which dealt with a similar fact pattern. The Applicant was a stateless Palestinian who was born in Kuwait.²³⁹ He and his parents were asked to leave Kuwait after the Gulf War ended.²⁴⁰ In contrast to the *El Himri* Court, the Court of Appeal verified that the Applicants were not members of a persecuted minority that faced ongoing economic discrimination. “Frankly, since the Liberation of Kuwait and the normalization process, Palestinians from Kuwait have received extensions of their residence permit and are not being deported as they were at the conclusion of the Gulf War.”²⁴¹ The Applicant could not return to Kuwait merely because he did not have a valid residence permit.²⁴² Hence, refugee status in Canada was denied.²⁴³

2. When an Individual Loses Nationality Rights by His or Her Own Act

This section analyses cases where an individual loses access to nationality rights as a direct cause of his or her deliberate or negligent act. The individual is then rendered stateless. In these situations, he is at fault. A State that withdraws citizenship that is procured by fraud or deception is not deemed to act arbitrarily under international law. That revocation does not

234. *El Himri v. Ashcroft*, 378 F.3d 932, 937 (9th Cir. 2004).

235. *Id.* at 934.

236. *Id.* at 937.

237. Ministerial Decree No. 15 of 1959, *supra* note 233.

238. *Thabet v. Canada*, [1998] 4 F.C. 21 (C.A.), 48 Imm. L.R. (2d) 195 (F.C.A.).

239. *Id.* at 1.

240. *Id.* at 4.

241. *Id.* at 15.

242. *Id.*

243. *Id.*

conflict with Article 15(2) of the UDHR²⁴⁴; it also is justified by Article 8(2)(b) of the 1961 Statelessness Convention.²⁴⁵

Article 8²⁴⁶

1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud.

Article 8(2)(a) recognizes the right of a State to void nationality if a person resides abroad for at least seven years and fails to maintain nationality requisites like renewing a passport.²⁴⁷ These procedural demands are not onerous to comply with. One who omits to fulfil the conditions implies that he does not intend to keep a nexus with the State.

The ECJ and ECtHR address the above issues in *Janko Rottmann v. Freistaat Bayern*²⁴⁸ and *Tjebbes & Ors v. Minister van Buitenlandse Zaken*.²⁴⁹ In *Rottmann* and *Tjebbes* the Applicants held nationality of an EU State.²⁵⁰ They forfeited the nationality inadvertently or deliberately.²⁵¹ As in *Kaur*, they challenged the additional deprivation of EU citizenship.²⁵²

The *Rottmann* judgment focuses on Article 7 of the European Convention on Nationality.²⁵³

244. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948)

245. G.A. Res 896 (IX), Convention on the Reduction of Statelessness, at art. 8(2)(b) (Aug. 30, 1961)

246. *Id.*

247. G.A. Res 896 (IX), *supra* note 245, at art. 7(4).

248. Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, 2010 E.C.R. I-01449, ¶ 16.

249. Case C-221/17, *Tjebbes & Ors v. Minister van Buitenlandse Zaken*, 2019 EU:C:2019:189, ¶¶ 3-4.

250. Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, 2010 E.C.R. I-01449, ¶¶ 25-26; Case C-221/17, *Tjebbes & Ors v. Minister van Buitenlandse Zaken*, 2019 EU:C:2019:189, ¶ 13.

251. Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, 2010 E.C.R. I-01449, ¶ 28; Case C-221/17, *Tjebbes & Ors v. Minister van Buitenlandse Zaken*, 2019 EU:C:2019:189, ¶ 13.

252. Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, 2010 E.C.R. I-01449, ¶ 30; Case C-221/17, *Tjebbes & Ors v. Minister van Buitenlandse Zaken*, 2019 EU:C:2019:189, ¶ 18.

253. Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, 2010 E.C.R. I-01449, ¶ 52; *European Convention on Nationality*, *supra* note 166, at art. 7.

Article 7²⁵⁴

1. A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:

- (a) voluntary acquisition of another nationality;
- (b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;

3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, subparagraph b, of this article.

The Grand Chamber of the ECJ held that a Member State is empowered to negate nationality that an applicant procures by deception.²⁵⁵ However, the State must first observe the principle of proportionality to determine whether to withdraw nationality.²⁵⁶ This safeguard ensures that the State does not act randomly. It is a precaution that underlies the Court's prior ruling that "[u]nder international law, it is for each Member State, having due regard to [EU] law, to lay down the conditions for the acquisition and loss of nationality."²⁵⁷

Dr. Janko Rottmann was born in Austria in 1956 and gained automatic nationality under the *jus soli* principle.²⁵⁸ As an EU citizen, he utilised his mobility rights to move to Germany in 1995.²⁵⁹ He continued his profession as a venture capitalist and surrendered the citizenship to apply for German nationality in 1998.²⁶⁰ His motive was for financial reasons. Austria had issued an arrest warrant in 1997 to investigate him for financial crimes.²⁶¹ Rottmann did not disclose on his citizenship application that he had undergone criminal proceedings.²⁶² The Austrian municipal authorities and the Austrian Public Prosecutor informed the City of Munich about the judicial

254. Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, 2010 E.C.R. I-01449, ¶ 20; *European Convention on Nationality*, *supra* note 166.

255. Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, 2010 E.C.R. I-01449, ¶ 59.

256. *Id.* ¶¶ 51-53, 59.

257. *Id.* ¶ 39; Case C-369/90 *Micheletti and Others v. Delgación del Gobierno en Cantabria*, 1992 E.C.R. I-4239, ¶ 10.

258. Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, 2010 E.C.R. I-01449, ¶ 22.

259. *Id.* ¶ 23.

260. *Id.* ¶ 26; *see generally* ¶¶ 5, 7 (explaining Germany allows dual nationality but Austria does not; citing GRUNDGESETZ [GG] [BASIC LAW] at 16(1) (providing: "No German may be deprived of his citizenship. Citizenship may be lost only pursuant to a law, and against the will of the person affected only if he does not become stateless as a result")); ¶ 9 (citing Staatsbürgerschaftsgesetz 'the StbG' [BGBI] [the Law on nationality] 311/1985 at 27(1) (providing "Any person who acquires foreign nationality at his own request, or by reason of a declaration made by him or with his express consent, shall lose his Austrian nationality unless he has expressly been given the right to retain [it]")).

261. *Id.* ¶¶ 23, 24.

262. *Id.* ¶ 25.

investigation and criminal proceedings six months after Rottmann gained German citizenship.²⁶³ Germany revoked the citizenship on grounds of deception.²⁶⁴ This retroactive action and Rottmann's resulting stateless status fell within the ambit of Article 7. However, the German authorities could have prevented the latter situation from arising if they had investigated Rottmann's background thoroughly as a citizenship applicant. The swiftness with which the Freistaat Bayern had granted nationality to Rottmann is disconcerting. The Applicant was an alleged white-collar criminal in his Home State and had withheld required facts to falsify his application in the Host State.²⁶⁵

The ECJ directed Austria to apply the proportionality principle²⁶⁶ in assessing whether to restore Rottman's birth citizenship. "The Court cannot, however, rule on the question whether a decision not yet adopted is contrary to European Union law. As the Austrian Government maintained at the hearing, the Austrian authorities will possibly have to adopt a decision on the question whether the applicant in the main proceedings is to recover his

263. *Id.* ¶ 27.

264. *Id.* ¶ 28.

265. *See* Canada (Minister of Citizenship and Immigration) v. Oberlander, [2000] F.C.J. No. 229 ¶¶ 177, 178, 189, 198, & 209-214 (Can.) (QL), *appeal granted*, [2016] 4 F.C.R. 55 (Can.), *appeal dismissed*, [2019] F.C.A. 64 (Can.) (where in a similar situation the Supreme Court of Canada upheld the revocation of an ex-Nazi interpreter's Canadian citizenship. Helmut Oberlander had applied in Germany for a permanent residence or landed immigrant visa to enter Canada. He knowingly withheld material facts from the interviewing visa officer. He was granted the visa in February 1954 and moved to Canada two months later. Canada awarded Oberlander citizenship in 1960. However, the citizenship was obtained wrongfully as it was based on the misrepresentations made during the 1954 interview. It was in breach of Section 18(1) of the Canadian Citizenship Act.). *But see* Canada (Minister of Citizenship and Immigration) v. Alexander Vavilov, 2019 SCC 65, ¶¶ 147-149, 151-153, 155, 196, 317-318, 321, & 342 (Can.) (where, ruling contrarily in a more recent judgment, the Supreme Court restored the jus soli Canadian citizenship of the Respondent. It should not be overlooked that the Respondent was born in Canada as a direct result of deception. The parents were Russian nationals who had entered Canada but assumed false Canadian identities to reside without suspicion and start a family. According to the judgment, the parents "assumed the identities of two deceased Canadians and fraudulently obtained Canadian passports". They used the identities to relocate to France and the U.S. wherein the family acquired U.S. citizenship. In 2010, the U.S. authorities investigated the true identities of the parents. They arrested the parents on grounds of money laundering and conspiracy to act as unregistered agents of a foreign government. The parents pled guilty to the latter and were deported to their home country. The Respondent's U.S. citizenship was revoked subsequently. In 2014, the Canadian Registrar of Citizenship cancelled the Respondent's certificate of citizenship pursuant to Section 26(3) of the Citizenship Regulations SOR/93-246 permitting the Registrar to cancel the certificate if the holder is not entitled to the certificate. The Registrar relied on Section 3(2) of the Citizenship Act which does not apply the jus soli principle to children of "a diplomatic or consular officer or other representative or employee in Canada of a foreign government." The Supreme Court disagreed with this interpretation. The judgment does not place weight on the deception or misrepresentation employed by the Respondent's parents to live in Canada and qualify their potential offspring for automatic nationality.)

266. *See* Treaty on European Union, *supra* note 160, at 13 (defining the principle of proportionality whereby "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.")

nationality of origin and when that decision has been adopted the Austrian courts will, if necessary, have to determine whether it is valid in the light of the principles referred to in this judgment.”²⁶⁷ Dr. Rottmann currently has Austrian citizenship.²⁶⁸ The reinstatement by Austria is in assent with the aims of Article 8(1) of the 1961 Statelessness Convention and Article 7(3) of the European Convention on Nationality.

The Grand Chamber of the ECJ expanded on the proportionality principle in Tjebbes. It found that the Netherlands Nationality Law with respect to regulating adult dual citizens was not unfair in the public interest.²⁶⁹ Article 15(c) stipulates that individuals who reside abroad for at least ten years consecutively can automatically lose their Dutch Nationality.²⁷⁰ This situation is avoided if the individual demonstrates that he has a genuine link with the Netherlands.²⁷¹ At a minimum, one must interrupt the ten-year period by living in the Netherlands for at least one year.²⁷² Alternatively, he can apply for and acquire a Netherlands travel document, a Netherlands identity card, or a written declaration that he has Netherlands nationality.²⁷³ In Tjebbes, the four Applicants (three adults and one teenager) did not risk

267. Case C-135/08, Janko Rottmann v. Freistaat Bayern, 2010 E.C.R. I-01449, ¶ 63.

268. See Janko Frank Rottman, PRABOOK, https://prabook.com/web/janko_frank.rottman/n/703863.

269. Case C-221/17, Tjebbes & Ors v. Minister van Buitenlandse Zaken, 2019 EU:C:2019:189, ¶¶ 34, 39, & 41.

270. Netherlands Nationality Act at art. 15(1)(c).

271. Case C-221/17, Tjebbes & Ors v. Minister van Buitenlandse Zaken, 2019 EU:C:2019:189, ¶ 5 (citing *European Convention on Nationality*, *supra* note 166, at art. 7(1)(e)). Article 7 provides:

“1. A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:

(e) lack of a genuine link between the State Party and a national habitually residing abroad.”

272. Netherlands Nationality Act, *supra* note 270, at art. 15(1)(c), (3).

273. Case C-221/17, Tjebbes & Ors v. Minister van Buitenlandse Zaken, 2019 EU:C:2019:189, ¶¶ 9-12 (citing Rijkswet op het Nederlanderschap (Law on Netherlands Nationality), Article 6(a)(f): “After making a written declaration to that effect, the following persons shall acquire Netherlands nationality by a confirmation as referred to in paragraph 3: an adult foreign national who has at any time held Netherlands nationality ... and who for a period of no less than one year has a residence permit of indefinite duration and his principal residence in the Netherlands ... unless he has lost his Netherlands nationality pursuant to Article 15(1)(d) or (f).” Paragraph 15 of that law provides

“1. An adult shall lose his Netherlands nationality:

(c) if he also holds a foreign nationality and if, after attaining his majority and while holding both nationalities, he has his principal residence for an uninterrupted period of 10 years outside the Netherlands ... and outside the territories to which the [EU Treaty] applies ...;

3. The period referred to in the first paragraph under (c) shall be deemed not to have been interrupted if the person concerned, for a period of less than one year, has his principal residence in the Netherlands ... or in the territories to which the [EU Treaty] applies.

4. The period referred to in the first paragraph under (c) can be interrupted by the issuing of a declaration regarding the possession of Netherlands nationality or a travel document or Netherlands identity card within the meaning of the [Paspoortwet (Law on passports)]. A new period of 10 years shall start to run as from the day of issue.”)

becoming stateless since they had other nationalities. They were resident citizens of countries where there were no domestic or foreign travel restrictions. The principal place of residence was Canada, Switzerland, or Iran.²⁷⁴ Under the laws of these States, the Applicants had the liberty to approach the local Netherlands embassy or enter the Netherlands unhindered. Yet they deliberately or negligently did not adhere to Article 15(c). They omitted to renew their Dutch passports before the expiry dates.²⁷⁵ Therefore, their Dutch nationality was revoked by operation of law.²⁷⁶ The ECJ confirmed that the associated loss of EU citizenship was a proportional statutory effect since EU citizenship is subordinate to nationality of a Member State.²⁷⁷ Community citizenship is a benefit but does not oust domestic nationality.²⁷⁸

While three of the Applicants possessed Netherlands nationality under the *jus soli* principle,²⁷⁹ the fourth Applicant had pursued the naturalization route.

“Ms Saleh Abady was born on 25 March 1960 in Teheran (Iran). She is an Iranian national by birth. By Royal Decree of 3 September 1999 she also acquired Netherlands nationality. On 6 October 1999, a Netherlands passport, which was valid until 6 October 2004, was issued to her for the last time. On 3 December 2002 her registration with the Personal Records Database was suspended because of her emigration. Since that date Ms Saleh Abady has clearly had her principal residence in Iran without interruption. On 29 October 2014 she submitted a passport application to the Embassy of the Kingdom of the Netherlands in Teheran (Iran).”²⁸⁰

However, based on the above facts, she was not eligible to apply for Netherlands citizenship nor retain [it] thereafter. The judgment states that Abady is an Iranian national by birth.²⁸¹ It does not state that Abady was an Iranian national. In other words, Abady is still an Iranian national. This status conflicts with Iranian nationality law which forbids dual citizenship.²⁸²

274. Case C-221/17, *Tjebbes & Ors v. Minister van Buitenlandse Zaken*, 2019 EU:C:2019:189, ¶¶ 13-16.

275. *Id.*

276. *Id.* ¶ 17.

277. *Id.* ¶ 39.

278. Treaty on the Functioning of the European Union (TFEU) [2016] O.J. C202/1, art. 20(1) (“Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.”)

279. Case C-221/17, *Tjebbes & Ors v. Minister van Buitenlandse Zaken*, 2019 EU:C:2019:189, ¶¶ 13, 14, & 16.

280. *Id.* ¶ 15.

281. *Id.*

282. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 41.

Article 41²⁸³

Citizenship of Iran is the indisputable right of every Iranian, and the government cannot take this right away unless the person requests it or if he becomes the citizen of another nation.

Hence, Tjebbes overlooks that Ms. Saleh Abady never was entitled to apply for nor procure Netherlands nationality under the laws of Iran.²⁸⁴ Moreover, it does not appear that Abady intended to sustain a genuine and ongoing link with the Netherlands. The Applicant returned permanently to her Home State three years after receiving her Netherlands passport.²⁸⁵ She severed her connecting factors by not renewing her passport two years later or satisfying the twelve months residence requirement.²⁸⁶

Though the Tjebbes judgment approves an automatic loss of Dutch citizenship for adults under Article 15(c), the ECJ encourages a concessionary approach when a dual national is a child or minor. The latter approach adheres to the safeguards to be proportional and in the public interest.²⁸⁷ The public interest is served by heeding the best interests of the child under Article 24(2) of the Charter of Fundamental Rights of the European Union.²⁸⁸ The State's respect for private and family life under Article 7 of the Charter support and protect the best interests of the child.²⁸⁹ The ECJ, accordingly, recognizes the best interests of the child standard as a policy factor that applies on a case by case basis.²⁹⁰ That stance is relevant and beneficial in particular if an Applicant is potentially Stateless because the parents lack the knowledge or accessibility to comply with Article 15(c). In Tjebbes, the child Applicant and her parents presumably were aware of their legal requirements since their habitual residence was in Europe. Ms. Duboux was born and raised in Switzerland.²⁹¹ She was granted dual nationality at birth: Netherlands nationality from her mother and Swiss nationality from her father.²⁹² Like many minors, she travelled on her mother's passport.²⁹³ She

283. *Id.*

284. Case C-221/17, Tjebbes & Ors v. Minister van Buitenlandse Zaken, 2019 EU:C:2019:189.

285. *Id.* ¶ 15.

286. *Id.* ¶¶ 15, 17.

287. *Id.* ¶¶ 25, 40, & 43.

288. Charter of Fundamental Rights of the European Union [2012] O.J. C326/02, art. 24(2) ("In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.").

289. *Id.* at art. 7 ("Everyone has the right to respect for his or her private and family life, home and communications."); Case C-221/17, Tjebbes & Ors v. Minister van Buitenlandse Zaken, 2019 EU:C:2019:189, ¶¶ 45, 47.

290. Case C-221/17, Tjebbes & Ors v. Minister van Buitenlandse Zaken, 2019 EU:C:2019:189, ¶ 47.

291. *Id.*

292. *Id.*

293. *Id.*

never applied for her own Dutch passport even though her mother's passport expired in 2005 and was not renewed.²⁹⁴ As a Swiss citizen, she did not have EU citizenship as Switzerland is not an EU Member State. She and her mother applied for their respective Netherlands passports in Switzerland when she was nineteen years old.²⁹⁵ This occurred one year after Ms. Duboux reached her age of majority.²⁹⁶ Ms. Duboux's application was rejected mainly due to Article 16(d) of the Netherlands Nationality Law.²⁹⁷ Article 16(d) deprives a child of Dutch nationality if a parent foregoes her nationality under Article 15(1)(c).²⁹⁸ The ECJ agreed with the observations of the referring court that a child depends on its parents to act on its behalf.²⁹⁹ A minor child does not have the psychological, financial and legal autonomy to decide if, when, and how to apply for nationality or meet residence requirements. He or she is not at fault for any loss of citizenship. Yet, this does not mean that courts should not consider similar cases cautiously. It is imperative that parents of Applicants do not misuse the Tjebbes precedent. Guardians who delay their decision-making responsibilities because they anticipate that the Applicant can rely on Tjebbes are not acting in the best interests of the child.

III. CONCLUSION

The current absence of a right to nationality clause that is enshrined in a binding global treaty impairs access to justice under both international and domestic law. This omission disadvantages all persons. There is no transnational legal guarantee that adults and children are entitled to nationality or citizenship. The lack of a statutory definition of 'nationality' or 'citizenship' under international law also aggravates the likelihood of intentional or random causes of statelessness. The working effectiveness of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness depends on whether individual member states take initiative to prevent statelessness and redress victims.

The above drawbacks reinforce that it is yet another great loss to the international legal system that the UDHR is not binding.³⁰⁰ At present, the scope of Article 15 is instructive but restricted. Article 15 makes three statements that identify fundamental protective rights.³⁰¹ If binding, Article 15 would comprise adequate nationality rights.

294. *Id.*

295. *Id.* ¶¶ 14, 16.

296. *Id.* ¶ 16.

297. *Id.* ¶¶ 11, 27.

298. *Id.* ¶ 29, 36.

299. *Id.* ¶¶ 25, 44.

300. *Justice K.S. Puttaswamy (Retd) v. Union Of India*, (2018) 494 SCC 196 (India).

301. UDHR, *supra* note 1, at art. 15; Dollinger, *supra* note 9; *American Declaration*, *supra* note 10.

Article 15³⁰²

- (1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Therefore, a viable solution would be to replicate Article 15 in a binding global agreement. However, the incorporation of the text of Article 15(1)(2), whilst essential, is insufficient by itself. States and judicial forums must respect due process in all circumstances. To this end, they should avoid applying retroactive or discriminatory laws that arbitrarily or unconstitutionally³⁰³ void nationality and result in statelessness.

302. UDHR, *supra* note 1, at art. 15.

303. *Alvin Teage Jalloh v. Minister of Foreign Affairs and Others*, (2019) SCRLC 1, 9 (Liberia).